

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SUBSTITUTE FOR SENATE BILL NO. 286**

As Agreed to March 31, 2022

Brief*

House Sub. for Sub. for SB 286 would amend and extend the expiration dates and effectiveness of provisions regarding the governmental response to the COVID-19 pandemic; amend certain healthcare provider immunity provisions related to the COVID-19 public health emergency; create the crime of interference with the conduct of a hospital; and increase the penalty for the crime of battery when committed against a healthcare provider.

The bill also would make technical amendments to update statutory references and remove outdated language.

The bill would be in effect upon publication in the *Kansas Register*.

Governmental Response to the COVID-19 Pandemic

The bill would extend the expiration dates and effectiveness of various provisions regarding the governmental response to the COVID-19 pandemic from March 31, 2022, until January 20, 2023. For the provisions that expired on March 31, 2022, the bill would state that notwithstanding this expiration, the provisions would be in force and effect on and after the effective date of the bill.

The provisions that would be extended include:

- Expansion of telemedicine;
- Use of hospital beds and non-hospital space;
- Immunity from civil liability for health care providers related to the COVID-19 public health emergency;
- Immunity from civil liability for COVID-19 claims for businesses in substantial compliance with public health directives;
- Retroactivity provisions regarding immunity from civil liability; and

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- Bed usage by critical access hospitals.

The bill also would amend the provisions regarding immunity from civil liability for healthcare providers. Current law provides healthcare providers with immunity from civil liability for damages, administrative fines, or penalties for acts, omissions, healthcare decisions, or the rendering of or the failure to render healthcare services, including services that are altered, delayed, or withheld, as a direct response to the COVID-19 public health emergency. The bill would limit the applicability of this immunity provision to healthcare providers that are not employed by or providing healthcare services at a medical care facility, as defined in statutes governing standards for such facilities. In addition to the extension of this provision until January 20, 2023, the bill would state the provision would apply to such claims accruing on or after March 30, 2022, and prior to the effective date of the bill. [Note: Under continuing law, the immunity period began March 12, 2020.]

For healthcare providers employed by or providing healthcare services at a medical care facility, the bill would provide immunity from civil liability for damages, administrative fines, or penalties that arise out of or relate to acts, omissions, healthcare decisions, or the rendering of or the failure to render healthcare services, including services that are altered, delayed, or withheld, related to the COVID-19 public health emergency. This immunity would not apply to a healthcare provider employed by or providing healthcare services at a medical care facility that denies healthcare services to a person at such medical facility based solely on such person's COVID-19 vaccination status. Additionally, the bill would provide that this immunity would apply to any claims for damages or liability that arise out of or relate to acts, omissions, or healthcare decisions occurring between the effective date of the bill and January 20, 2023, related to the COVID-19 public health emergency, and would apply to any cause of action accruing on or after the effective date of the bill and prior to January 20, 2023.

Interference With the Conduct of a Hospital

The bill would create the crime of interference with the conduct of a hospital, which would be defined as:

- Conduct at or in a hospital so as to knowingly deny an employee of the hospital to enter, to use the facilities of, or to leave any such hospital;
- Knowingly impeding any employee of a hospital from the performance of such employee's duties or activities through the use of:
 - Restraint with the intent to prevent such employee from freely moving to a different location or to provide care for another person;
 - Abduction, coercion, or intimidation; or
 - By force and violence or threat thereof; or
- Knowingly refusing to leave a hospital upon being requested to leave by the employee charged with maintaining order in such hospital, if such person is committing, threatens to commit, or incites others to commit any act that did, or would if completed, disrupt, impair, interfere with, or obstruct the mission, processes, procedures, or functions of the hospital.

The bill also would create the crime of aggravated interference with the conduct of a hospital, which would be defined as any of the above conduct when in possession of any weapon included in the crimes of criminal use of weapons or criminal carrying of a weapon.

For purposes of the new crimes, the bill would define “employee” to mean a person employed by, providing healthcare services at, volunteering at, or participating in an educational course of instruction at a hospital; and would define “hospital” to mean the same as defined in statutes governing the licensing, inspection, and regulation of hospitals.

Interference with the conduct of a hospital would be a class A nonperson misdemeanor, and aggravated interference with the conduct of a hospital would be a severity level 6 person felony.

Battery Against a Healthcare Provider

The bill would amend the crime of battery to define battery against a healthcare provider as a battery committed against a healthcare provider while such provider is engaged in the performance of such provider’s duty. “Healthcare provider” would be defined to mean a person who is licensed, registered, certified, or otherwise authorized by the State of Kansas to provide healthcare services in this state and employed or providing healthcare services at a hospital.

Battery against a healthcare provider would be a class A person misdemeanor.

Conference Committee Action

The Second Conference Committee agreed to the provisions of House Sub. for Sub. for SB 286, as amended by the House Committee of the Whole, with the following amendments:

- Clarifying the elements of the crime of interference with the conduct of a hospital; and
- Modifying the immunity provisions for healthcare providers, including:
 - Continuing existing immunity for healthcare providers not employed by or providing healthcare services at a medical care facility; and
 - Applying the immunity provisions, as amended by the House Committee of the Whole, to healthcare providers employed by or providing healthcare services at a medical care facility, creating an exception from such immunity if the medical care facility denies healthcare services based solely on COVID-19 vaccination status, and specifying a time period during which such immunity would apply.

Background

As referred to the House Committee on Judiciary on May 5, 2021, Sub. for SB 286 contained provisions regarding COVID-19 business relief. These provisions were passed in the Conference Committee Report for 2021 House Sub. for Sub. for SB 273, which was vetoed by the Governor on May 21, 2021.

On February 17, 2022, the House Committee on Judiciary recommended a substitute bill for Sub. for SB 286 containing contents modified from HB 2652.

On March 9, 2022, the House Committee of the Whole amended the bill to:

- Adjust the healthcare provider civil immunity provision [*Note: This provision was further modified by the Conference Committee.*];
- Add the provisions of HB 2620, as amended by House Committee, regarding interference with the conduct of a hospital and battery against a healthcare provider [*Note: These provisions were further modified by the Conference Committee.*]; and
- Make a technical amendment.

HB 2652 (Governmental Response to COVID-19 and Other Provisions)

HB 2652 was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Chamber of Commerce, Kansas Health Care Association, and Kansas Hospital Association.

House Committee on Judiciary

In the House Committee hearing on February 14, 2022, a representative of the Kansas Chamber of Commerce, a representative of the Kansas Center for Assisted Living and Kansas Health Care Association, and a representative of the Kansas Academy for Family Physicians, Kansas Hospital Association, and Kansas Medical Society testified as **proponents** of the bill, stating it would continue to help facilitate the response to the COVID-19 pandemic. Representatives of the Greater Kansas City Chamber of Commerce, InterHab, Kansas Adult Care Executives, and LeadingAge Kansas provided written-only proponent testimony. A private citizen testified as an **opponent** of the bill, stating concerns with the telemedicine and other provisions.

On February 17, 2022, the House Committee adopted an amendment removing a section enacted earlier this year in HB 2477. The House Committee then recommended the contents of Sub. for SB 286, as amended by the Senate Committee of the Whole, be replaced with the amended language of HB 2652 as a House substitute bill.

HB 2620 (Crimes – Hospitals and Healthcare Providers)

HB 2620 was introduced by Representatives Featherston, Concannon, Burroughs, Byers, Clifford, Eplee, Haswood, Hoyer, Timothy Johnson, Meyer, Neelly, Ousley, Poskin, Susan Ruiz, Schmidt, Schreiber, Vaughn, Wolfe Moore, and Xu.

House Committee on Judiciary

In the House Committee hearing on February 10, 2022, representatives of AdventHealth Shawnee Mission, Ascension Via Christi Hospitals Wichita, Kansas Hospital Association,

Kansas State Nurses Association, NMC Health, Saint Luke's Health System, Stormont Vail Health; a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association; and a physician and three nurses testified as **proponents** of the bill. Generally, the proponents stated violence in health care facilities and against health care workers has risen over the past decade, which is harming employees, disrupting care, and affecting staffing levels. Written-only proponent testimony was provided by a physician, a nurse, and representatives of the Kansas County and District Attorneys Association and the Kansas Emergency Nurses Association. No other testimony was provided.

On February 15, 2022, the House Committee amended the bill to define "employee" and modify the definition of "healthcare provider." [Note: These amendments were retained by the Conference Committee.]

Fiscal Information

HB 2652 (Governmental Response to COVID-19 and Other Provisions)

According to the fiscal note prepared by the Division of the Budget on HB 2652, as introduced, the Board of Healing Arts indicates enactment of the bill would have a negligible fiscal effect that would be absorbed within existing resources. The Judicial Branch states enactment of the bill would not have a fiscal effect. The fiscal effect for the provisions regarding hospital usage cannot be estimated. Any fiscal effect associated with enactment of HB 2652 is not reflected in *The FY 2023 Governor's Budget Report*.

HB 2620 (Crimes – Hospitals and Healthcare Providers)

According to the fiscal note prepared by the Division of the Budget on HB 2620, as introduced, the Kansas Sentencing Commission estimates enactment of the bill could have an effect on prison admissions and bed space, but the effect cannot be determined because the bill would create new factual circumstances that are not currently tracked. The Department of Corrections indicates enactment of the bill would have no fiscal effect.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts due to the new crimes, which could increase the time spent by court personnel handling such cases. The misdemeanor penalties could require more supervision of offenders by court services officers. Enactment of the bill could result in the collection of additional docket fees, supervision fees, and fines assessed in cases filed under the bill's provisions, but a fiscal effect cannot be determined because the number of additional cases cannot be estimated.

Any fiscal effect associated with enactment of HB 2620 is not reflected in *The FY 2023 Governor's Budget Report*.

Governmental response to COVID-19; telemedicine; hospital beds; health care provider immunity; pandemic; crimes; interference with the conduct of a hospital; battery against a healthcare provider

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